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FISCAL IMPACT STATEMENT

LS 6534

BILL NUMBER: SB 240

NOTE PREPARED: Dec 29, 2011

BILL AMENDED:

SUBJECT: Use Tax Collection on Remote Sales.

FIRST AUTHOR: Sen. Walker

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that for purposes of the Indiana Sales and Use Tax law, a "retail merchant engaged in business in Indiana" includes any person that uses an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business located in Indiana. It voids any ruling or agreement between a person and the state if it permits the person to not collect sales or use tax even if a warehouse, distribution center, or fulfillment center that is located in Indiana is owned or operated by the person or an affiliated person unless the General Assembly ratifies the ruling or agreement in the next legislative session.

The bill provides that a person is presumed to be a retail merchant engaged in business in Indiana if the person:

- (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana or is affiliated with a person that has substantial nexus in Indiana and certain conditions are met; or
- (2) enters into an agreement with one or more residents of Indiana under which the resident directly or indirectly refers potential customers to the retail merchant, if the cumulative gross receipts from the sales by the retail merchant to customers in Indiana who are referred to the retail merchant is greater than \$10,000 during the preceding 12 months. It specifies that these presumptions may be rebutted.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Department of State Revenue (DOR):* This bill will result in an increase in administrative costs for the DOR by requiring the DOR to revise Sales Tax forms to incorporate the provisions of this bill. The DOR reports that their existing level of resources is sufficient to implement this provision.

Explanation of State Revenues: *Impact on Sales Tax Revenue:* This bill would increase Sales Tax revenue by an indeterminable amount. The amount of the increase would depend on the extent to which the definition change influences the location decision of a business entity. The bill expands the definition of who qualifies as a “retail merchant”. The definition change is effective after September 30, 2012. The expanded definition would require certain electronic commerce (e-commerce) entities to remit Sales Tax. Additionally, the bill voids any agreement between a person and the state if it permits the person to not collect sales or use tax even if a warehouse, distribution center, or fulfillment center that is located in Indiana is owned or operated by the person or an affiliated person, unless the General Assembly ratifies the ruling or agreement in the next legislative session.

Current statute requires that an individual pay use tax on online transactions on the individual’s income tax return. In FY 2011, approximately \$1.77 M was collected in Use Tax on the tax year 2010 individual income tax returns.

Background Information: The Main Street Fairness Act (HR 2701) was introduced in the U.S. House of Representatives on July 29, 2011, and was referred to the House Committee on the Judiciary. The Main Street Fairness Act, which would allow states, provided they have met certain conditions, to require Internet and mail order retailers to collect sales tax. The legislation would allow any state that has adopted the Streamlined Sales and Use Tax Agreement to collect sales and use taxes from remote sellers. There are currently 24 member states in compliance with the Streamlined Sales and Use Tax Agreement, including Indiana.

A study conducted by the Indiana Fiscal Policy Institute and the Ball State University Center for Business and Economic Research examined how much revenue Indiana will lose in 2012 as a result of the absence of a tax on e-commerce transactions. The estimated revenue loss ranged from \$39.6 M to \$114.3 M. Additionally, the study examined the effect of a tax on e-commerce transactions on an e-commerce entity’s location decision and found no statistically significant relationship. A University of Tennessee study estimated e-commerce-related annual Sales Tax losses in Indiana at \$216.9 M for FY 2012.

Sales Tax revenue is deposited in the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Explanation of Local Expenditures:

Explanation of Local Revenues: Local revenues will be impacted to the extent that a local unit receives funds from the Commuter Rail Service Fund or the Industrial Rail Service Fund.

State Agencies Affected: DOR.

Local Agencies Affected:

Information Sources: *To Collect Sales Tax or Not: Indiana’s Ecommerce Conundrum - Determining the State’s Lost Sales Tax Revenue and Weighing the Amazon Tax Policy.* Indiana Fiscal Policy Institute, November 2011. Streamlined Sales Tax Governing Board, <http://www.streamlinedsalestax.org/>; H.R. 2701 Bill Text, S.1452 bill Text, Library of Congress; Tom Conley, DOR, 317-232-8039.

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